

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HILARY KOPROWSKI, M.D.

334 Fairhill Road
Wynnewood, PA 19096,

Plaintiff,

v.

THOMAS JEFFERSON UNIVERSITY,

1020 Walnut Street,
Philadelphia, Pa 19107,

Defendant.

CIVIL ACTION NO. 2010-cv-____

COMPLAINT

Plaintiff, Dr. Hilary Koprowski, states as follows for his claims against Defendant:

INTRODUCTION

1. This action for declaratory, injunctive and other appropriate relief is brought by plaintiff, Dr. Hilary Koprowski, to redress intentional violations by his employer, the defendant Thomas Jefferson University of rights secured to him by the laws of the United States of America.

2. This action arises under the Americans With Disabilities Act of 1990, 42 U.S.C. §12111, *et seq.* [hereinafter “ADA”], (as amended by the Americans with Disabilities Act Amendments Act of 2008 (“ADAAA”)).

JURISDICTION

3. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. §12117, all of which provide for original jurisdiction of plaintiff's

claims arising under the laws of the United States and over actions to secure equitable and other relief under the appropriate governing statutes.

VENUE

4. All actions complained of herein occurred within the jurisdiction of this Court and involve a defendant who regularly does business within its jurisdictional limits.

5. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. §§1391(b) and 1391(c).

THE PARTIES

I. Dr. Koprowski

6. Dr. Koprowski, born on December 5, 1916 in Warsaw, Poland, is a 93-year old distinguished, world-renowned virologist and immunologist who was the inventor of the world's first effective live polio vaccine.

7. Dr. Koprowski grew up in Warsaw where he attended the *Liceum Ogólnokształcące* and from age twelve took piano lessons at the Warsaw Conservatory. He received his medical degree from the Faculty of Medicine at Warsaw University in 1939. Dr. Koprowski also received music degrees from the Warsaw Conservatory and, in 1940, from the Santa Cecilia Conservatory in Rome. He adopted scientific research as his life's work, though he never gave up music and has composed several musical works.

8. In 1939, after the Nazi invasion of Poland Dr. Koprowski and his wife Irena, a medical doctor, fled first to Rome, then in 1940 to Paris and finally, via Spain and Portugal, to Brazil, where Dr. Koprowski worked in Rio de

Janeiro for the Rockefeller Foundation. His field of research for several years was finding a live-virus vaccine against yellow fever. After World War II the Dr. Koprowskis settled in Pearl River, New York, where Dr. Koprowski was hired as a researcher for Lederle Laboratories, the pharmaceutical division of American Cyanamid. There Dr. Koprowski began his polio experiments which ultimately led to the discovery of the first oral polio vaccine.

9. Dr. Koprowski created the world's first polio vaccine based on oral administration of attenuated polio virus. Dr. Koprowski's vaccine was taken by the first child on February 27, 1950, and within 10 years was being used on four continents. Albert Sabin's attenuated-live-virus polio vaccine was developed from attenuated polio virus that Sabin had received from Dr. Koprowski.

10. Dr. Koprowski has served as President of Biotechnology Foundation Laboratories, Inc., Head of the Center for Neurovirology at Thomas Jefferson University and is currently employed by Defendant, Thomas Jefferson University, in the Department of Cancer Biology.

11. Formerly, he was the Director of the Wistar Institute from 1957-1991 and currently he holds the title of Professor Laureate at that institution and has long served on its Board of Trustees. In 2006 he was awarded a record fiftieth grant from the National Institutes of Health. He is author or co-author of over 875 scientific papers and is co-editor of several journals. He serves as a consultant to the World Health Organization and the Pan American Health Organization.

12. Dr. Koprowski received many honorary degrees and honors, including the Order of the Lion from the King of Belgium, the French Order of Merit for Research and Invention, a Fullbright Scholarship, and appointment as the Alexander von Humboldt Professor at the Max Planck Institute for Biochemistry in Munich. In 1989, he received the San Marino Award for Medicine and the Nicolaus Copernicus Medal of the Polish Academy of Sciences in Warsaw.

13. Dr. Koprowski has received many honors in Philadelphia, including the Philadelphia Cancer Research Award, the John Scott Award and, in May 1990, the most prestigious honor given by his long-time home city, the Philadelphia Award. He is a Fellow of the College of Physicians of Philadelphia, which in 1959 presented him with its Alvarenga Prize.

14. Dr. Koprowski is a member of the National Academy of Sciences, the American Academy of Arts and Sciences, the New York Academy of Sciences, and the Polish Institute of Arts and Sciences of America. Dr. Koprowski also holds memberships in the Yugoslav Academy of Arts and Sciences, the Russian Academy of medical Sciences, and the Finnish Society of Sciences and Letters. On March 22, 1995, Dr. Koprowski was awarded the title of "Commander of the Order of the Lion of Finland" by the President of the Republic of Finland. On March 13, 1997, he also received the Legion d'Honneur from the French government and on September 29, 1998, he was presented the Grand Cross of the Order of Merit of the Republic of Poland by Poland's President.

15. On February 25, 2000, Dr. Koprowski was honored with a reception at Philadelphia's Thomas Jefferson University celebrating the 50th anniversary of the first administration of his oral polio vaccine. At the reception, he received commendations from the United States Senate, the Pennsylvania Senate and Governor Tom Ridge. On May 1, 2007, Dr. Koprowski was awarded the Albert Sabin Gold Medal by the Sabin Vaccine Institute in Baltimore.

B. Defendant Thomas Jefferson University

16. Thomas Jefferson University, an academic health center, was founded as Jefferson Medical College in 1824. Jefferson Medical College has awarded more than 26,000 medical degrees and has more living graduates than any other medical school in the nation. Initially, an infirmary to treat the poor that was opened in 1825, by 1844, Jefferson was providing patient beds over a shop at 10th and Sansom Streets. A 125-bed hospital, one of the first in the nation affiliated with a medical school, opened in 1877, and a school for nurses began in 1891.

17. On July 1, 1969, the institution became Thomas Jefferson University, composed of Jefferson Medical College, Thomas Jefferson University Hospital, the College of Graduate Studies, and the College of Allied Health Sciences. Today, this academic health center tests and treats 25,000 inpatients and more than 300,000 outpatients every year, and enrolls 2,600 future health

care professionals. Public and private funding of Jefferson research exceeds \$64 million annually.

18. At all times relevant hereto, Thomas Jefferson University was the employer of the Dr. Koprowski, as that term is defined in the controlling applicable Pennsylvania and federal anti-discrimination laws.

C. Employees Robert L. Barshi, M.D., Ph.D., Mark L. Tykocinski, M.D. and Cristina G. Cavalieri, Esq.

19. At all times relevant hereto, Defendant Robert L. Barski, M.D., Ph.D. was the President of Thomas Jefferson University and acting in that capacity, aided and abetted the unlawful actions of Thomas Jefferson University set forth below.

20. At all times relevant hereto, Defendant Mark L. Tykocinski, M.D. was the Dean of Thomas Jefferson University and acting in that capacity, aided and abetted the unlawful actions of Thomas Jefferson University set forth below.

21. At all times relevant hereto, Defendant Cristina G. Cavalieri, Esquire was University Counsel of Thomas Jefferson University and acting in that capacity, aided and abetted the unlawful actions of Thomas Jefferson University set forth below.

D. Statement Of Applicable Facts

22. At all times applicable hereto, Dr. Koprowski's current employment with Defendant Thomas Jefferson University, Dr. Koprowski suffered, and was known by the Defendant to be suffering, from disabilities arising from his age that directly and substantially affect his ability to sit, stand, walk and hear.

23. While each of these limitations affect major life activities (28 CFR Sec. 36.104), they do not impede Dr. Koprowski from carrying out any of his professional responsibilities. However, they do require that he be assisted in his daily employment by key staff and support personnel, consisting of his driver, a technician, a grants administrator, an office manager (Suzanne Jones) and an administrative assistant.

24. In fact, throughout his employment he has been assisted by a team of individuals who, prior to July 1, 2010, were fully compensated by Thomas Jefferson University.

25. On or about June 10, 2010, Dr. Koprowski was presented with a renewal contract extending his faculty appointment to engage in a continuation of his current research projects and employment at Thomas Jefferson University in the Department of Cancer Biology with full salary (\$134,998) and benefits by Dr. Tykocinski, a copy of which is attached hereto as Exhibit "A."

26. Within the fifteen-day period stipulated in that document, Dr. Koprowski executed and returned the document to Dr. Tykocinski, thereby agreeing to be employed under the terms set forth in the Agreement.

27. While the key staff and support personnel necessary to his carrying out his duties were not provided with similar extensions to their employment and their employment ended no later than July 9, 2010, Dr. Koprowski requested that the key staff people, including his driver, technician, grants administrator, office manager, and administrative assistant be

permitted to remain as Thomas Jefferson University employees with full continuation of their salaries and benefits at his sole expense.

28. When he received no response to that request for a reasonable accommodation to his age-related disabilities, Dr. Koprowski retained Richard Sprague, Esquire to reiterate his request for the reasonable accommodation of being permitted to continue being assisted by his key staff in carrying out his responsibilities as a member of the faculty and employee of the University at his sole expense, and to further request that he be permitted to remain in the offices he has utilized to carry out his scientific, administrative and faculty functions, thereby providing appropriate work space to the key staff team named above as well as providing adequate space to house the research, funding documents, and academic and scientific literature that constitutes the historical and current documentation of Dr. Koprowski's world-renowned research and cutting-edge scientific thinking.

29. On July 7, 2010, Mr. Sprague wrote to Defendant Tykocinski, with copies, *inter alia*, to Defendant Barchi and Defendant Cavalieri, fully reiterating the suggestions he had previously requested. A copy of the letter of Richard A. Sprague, Esquire dated July 7, 2010 is attached as Exhibit "B."

30. On July 9, 2010, Defendant Cavalieri responded to Mr. Sprague's suggestion by refusing to meet and discuss those issues with Mr. Sprague and suggesting that they were the proper subject of discussions with Dr. Koprowski alone. A copy of Cavalieri's letter of July 9, 2010 is attached as Exhibit "C."

31. Despite the assurances contained in Defendant Cavalieri's July 9, 2010 letter, none of the individuals involved on behalf of the University have approached Dr. Koprowski, but rather they have completely failed and refused to engage in the mandated interactive process to resolve the issues of Dr. Koprowski's disabilities and have further refused to accommodate his known disabilities.

32. Defendant has continued to assure Dr. Koprowski that it will engage in the interactive process with him to address his requests for accommodation with respect to his office space and staff, (see e.g. email from the University's counsel at exhibit "D"); however they have not done so.

33. On August 3, 2010, Dr. Koprowski filed complaints of disability discrimination and retaliation with the Equal Employment Opportunity Commission and with the Pennsylvania Human Relations Commission. A copy of the EEOC/PHRA charge is attached hereto as Exhibit "E."

34. On August 5, 2010, although the University still had not met with Dr. Koprowski, Plaintiff learned that the University intends to take action today, August 6, 2010, to: (1) displace Dr. Koprowski from his office (and thereby risk the loss of scientific papers and materials accumulated both during his nearly 20 year tenure at Jefferson and a lifetime emersion in world-class scientific discovery), (2) confiscate all of the lab equipment that has been clearly identified in writing as belonging exclusively to him and remove and destroy all of the ongoing experiment-related cultures from the five laboratories (346, 369, 459, 473, 470) previous assigned to and used by him (thereby

jeopardizing the experiments relating to grants on which Dr. Koprowski was and is the Principal Investigator), and (4) bar all of his five staff members from the grounds and buildings of the University. See email of counsel for Plaintiff attached hereto as Exhibit "F."

Count I

Violation of The Americans With Disabilities Act of 1990
[42 U.S.C. §§ 12111-12117]

35. Plaintiff repeats and re-alleges the above paragraphs as though fully set forth herein.

36. Plaintiff, Dr. Koprowski, is, and was at all times relevant hereto, a qualified individual with a disability as defined at 42 U.S.C. § 12111(8), in that he suffers from a physical disabilities arising from his age that directly and substantially affect his ability to sit, stand, walk and hear.

37. Despite these disabilities, with the accommodations of his staff and his long-time use of his office and laboratory facilities, Dr. Koprowski performed his responsibilities as a member of the research faculty of the University with excellence.

38. Defendant Thomas Jefferson University violated the Americans With Disabilities Act as evidenced by, *inter alia*, its refusal to engage in the interactive process with Plaintiff after Plaintiff sought an accommodation.

39. Defendant Thomas Jefferson University further violated the anti-retaliation provisions of the Americans with Disabilities Act by, *inter alia*, threatening the actions set forth in paragraph 34 above, without his consent, in clear and direct retaliation for his request for a reasonable accommodations

for his disabilities and for his filing of his EEOC/PHRA charge of discrimination based on age and disability.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Dr. Hilary Koprowski, respectfully requests that this Court:

- (a) Enter a declaratory judgment that defendant's acts, policies, practices and procedures complained of herein have violated and continue to violate the rights of plaintiff as secured to him by federal law;
- (b) Require Defendant Thomas Jefferson University meaningfully engage in the interactive process with Dr. Koprowski and his representatives as necessary because of his disability;
- (c) prohibit Defendant from removing Dr. Koprowski's property from rooms M81 or M85 JAH or from restricting Dr. Koprowski or his five staff members from University property;
- (d) prohibit Defendant from removing equipment or otherwise interfering with the ongoing experiments presently housed on the following laboratories: 346, 369, 459, 473, 470;
- (e) Grant to plaintiff costs, disbursements and reasonable attorneys' fees, pursuant to 29 U.S.C. § 626 (b); and

(f) Grant to plaintiff such additional relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

SPECTOR GADON & ROSEN, P.C.

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